

PATENT

1759.15100 DIV

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Robert Scribner et al.

Group No.: 3732

Serial No.: 09/804,107

Examiner: Unknown

Filed: March 12, 2001

For: Systems and Methods for Placing Materials into Bone

Commissioner of Patents and Trademarks
Washington, D.C. 20231

**STATEMENT BY ATTORNEY THAT APPLICATION FILED IN PTO IS THE
ONE INVENTOR(S) EXECUTED BY SIGNING DECLARATION**

I, Daniel D. Ryan, Registration No. 29,243, of RYAN KROMHOLZ & MANION, S.C., P.O. Box 26618, Milwaukee, Wisconsin 53226-0618, {(262) 783-1300} state I am an attorney for this application and the application identified above is the application which the inventor(s) executed by signing the declaration which is being submitted herewith.

CERTIFICATE OF MAILING (37 CFR 1.8a)

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

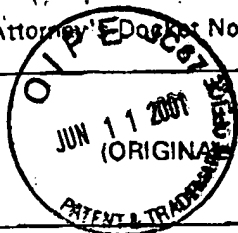
Mary Szollar

(Type or print name of person mailing paper)

Date: June 6, 2001

(Signature of person mailing paper)

Attorney's Docket No. 1. 00



COMBINED DECLARATION AND POWER OF ATTORNEY
DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL,
CONTINUATION OR CIP)

As a below named inventor, I hereby declare that:

TYPE OF DECLARATION

This declaration is of the following type: (check one applicable item below)

- ☒ original
☐ design
☐ supplemental

NOTE: If the declaration is for an International Application being filed as a divisional, continuation or continuation-in-part application do not check next item; check appropriate one of last three items.

- ☐ national stage of PCT

NOTE: If one of the following 3 items apply then complete and also attach ADDED PAGES FOR DIVISIONAL, CONTINUATION OR CIP.

- ☐ divisional
☐ continuation
☐ continuation-in-part (CIP)

INVENTORSHIP IDENTIFICATION

WARNING: If the inventors are each not the inventors of all the claims an explanation of the facts, including the ownership of all the claims at the time the last claimed invention was made, should be submitted.

My residence, post office address and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

TITLE OF INVENTION

Systems and Methods for Placing Materials into Bone

SPECIFICATION IDENTIFICATION

the specification of which: (complete (a), (b) or (c))

- (a) ☐ is attached hereto.
(b) ☒ was filed on August 14, 1998 as ☒ Serial No. 09/ 134,323
or ☐ Express Mail No., as Serial No. not yet known _____
and was amended on _____ (if applicable).

NOTE: Amendments filed after the original papers are deposited with the PTO which contain new matter are not accorded a filing date by being referred to in the declaration. Accordingly, the amendments involved are those filed with the application papers or, in the case of a supplemental declaration, are those amendments claiming matter not encompassed in the original statement of invention or claims. See 37 CFR 1.67.

- (c) ☐ was described and claimed in PCT International Application No. _____ filed on _____
and as amended under PCT Article 19 on _____ (if any).

ACKNOWLEDGEMENT OF REVIEW OF PAPERS AND DUE DILIGENCE

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37, Code of Federal Regulations, § 1.56

(also check the following item, if desired)

- ☐ In compliance with this duty there is attached an information disclosure statement in accordance with 37 CFR 1.98.

PRIORITY CLAIM (35 U.S.C. § 119)

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed.

(complete (d) or (e))

- (d) ☒ no such applications have been filed.
- (e) ☐ such applications have been filed as follows.

NOTE: Where item (c) is entered above and the International Application which designated the U.S. itself claimed priority check item (e), enter the details below and make the priority claim.

A. PRIOR FOREIGN/PCT APPLICATION(S) FILED WITHIN 12 MONTHS (6 MONTHS FOR DESIGN) PRIOR TO THIS APPLICATION AND ANY PRIORITY CLAIMS UNDER 35 U.S.C. § 119

COUNTRY (OR INDICATE IF PCT)	APPLICATION NUMBER	DATE OF FILING (day, month, year)	PRIORITY CLAIMED UNDER 37 USC 119
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO

ALL FOREIGN APPLICATION(S), IF ANY FILED MORE THAN 12 MONTHS
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION

NOTE: If the application filed more than 12 months from the filing date of this application is a PCT filing forming the basis for this application; entering the United States as (1) the national stage, or (2) a continuation, divisional, or continuation-in-part, then also complete ADDED PAGES TO COMBINED DECLARATION AND POWER OF ATTORNEY FOR DIVISIONAL, CONTINUATION OR CIP APPLICATION for benefit of the prior U.S. or PCT application(s) under 35 U.S.C. § 120.

POWER OF ATTORNEY

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith. (List name and registration number)

Arnold J. Ericson (16,879)
Allan B. Wheeler (18,180)
Daniel D. Ryan (29,243)

Ralph G. Hohenfeldt (17,717)
Allan O. Maki (20,623)
Joseph A. Kromholz (34,204)

(check the following item, if applicable)

- ☐ Attached as part of this declaration and power of attorney is the authorization of the above-named attorney(s) to accept and follow instructions from my representative(s).

SEND CORRESPONDENCE TO

DIRECT TELEPHONE CALLS TO:
(Name and telephone number)

Daniel D. Ryan
RYAN KROMHOLZ & MANION, S.C.
633 West Wisconsin Avenue
Suite 1900
Milwaukee, Wisconsin 53203

Daniel D. Ryan
(414) 271-6555

DECLARATION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

SIGNATURE(S)

NOTE: Carefully indicate the family (or last) name as it should appear on the receipt and all other documents.

Full name of sole or first inventor

ROBERT (GIVEN NAME) M (MIDDLE INITIAL OR NAME) SCRIBNER (FAMILY (OR LAST NAME))
 Inventor's signature *Robert M. Scribner*
 Date 1/21/99 Country of Citizenship USA
 Residence LOS ALTOS, CALIFORNIA
 Post Office Address 1133 MIGUEL DRIVE
LOS ALTOS, CALIFORNIA 94024

Full name of second joint inventor, if any

MICHAEL (GIVEN NAME) L (MIDDLE INITIAL OR NAME) REO (FAMILY (OR LAST NAME))
 Inventor's signature *Michael L. Reo*
 Date 1/21/99 Country of Citizenship USA
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 Post Office Address 701 BALTIC CIRCLE NO. 731
REDWOOD CITY, CALIFORNIA 94065

Full name of third joint inventor, if any

MARK (GIVEN NAME) A (MIDDLE INITIAL OR NAME) REILEY (FAMILY (OR LAST NAME))
 Inventor's signature _____
 Date _____ Country of Citizenship USA
 Residence PIEDMONT, CALIFORNIA
 Post Office Address 304 PALA AVENUE
PIEDMONT, CALIFORNIA 94611

Full name of fourth joint inventor, if any

RYAN (GIVEN NAME) (MIDDLE INITIAL OR NAME) BOUCHER (FAMILY (OR LAST NAME))
 Inventor's signature *Ryan Boucher*
 Date 1/21/99 Country of Citizenship USA
 Residence SAN FRANCISCO, CALIFORNIA
 Post Office Address 1424 CLAY STREET
SAN FRANCISCO, CALIFORNIA 94109

Full name of fifth joint inventor, if any

(GIVEN NAME) (MIDDLE INITIAL OR NAME) (FAMILY (OR LAST NAME))
 Inventor's signature _____
 Date _____ Country of Citizenship _____
 Residence _____
 Post Office Address _____

SIGNATURE(S)

NOTE: Carefully indicate the family (or last) name as it should appear on the filing receipt and all other documents.

Full name of sole or first inventor

ROBERT (GIVEN NAME) M (MIDDLE INITIAL OR NAME) SCRIBNER (FAMILY (OR LAST NAME))
Inventor's signature _____
Date _____ Country of Citizenship USA
Residence LOS ALTOS, CALIFORNIA
Post Office Address 1133 MIGUEL DRIVE
LOS ALTOS, CALIFORNIA 94024

Full name of second joint inventor, if any

MICHAEL (GIVEN NAME) L (MIDDLE INITIAL OR NAME) REO (FAMILY (OR LAST NAME))
Inventor's signature _____
Date 1/21/99 Country of Citizenship USA
Residence REDWOOD CITY, CALIFORNIA
Post Office Address 701 BALTIC CIRCLE NO. 731
REDWOOD CITY, CALIFORNIA 94065

Full name of third joint inventor, if any

MARK (GIVEN NAME) A (MIDDLE INITIAL OR NAME) REILEY (FAMILY (OR LAST NAME))
Inventor's signature _____
Date 1/20/99 Country of Citizenship USA
Residence PIEDMONT, CALIFORNIA
Post Office Address 304 PALA AVENUE
PIEDMONT, CALIFORNIA 94611

Full name of fourth joint inventor, if any

RYAN (GIVEN NAME) (MIDDLE INITIAL OR NAME) BOUCHER (FAMILY (OR LAST NAME))
Inventor's signature _____
Date _____ Country of Citizenship USA
Residence SAN FRANCISCO, CALIFORNIA
Post Office Address 1424 CLAY STREET
SAN FRANCISCO, CALIFORNIA 94109

Full name of fifth joint inventor, if any

(GIVEN NAME) (MIDDLE INITIAL OR NAME) (FAMILY (OR LAST NAME))
Inventor's signature _____
Date _____ Country of Citizenship _____
Residence _____
Post Office Address _____



PATENT

Attorney Docket No. 1759.15100

Applicant or Patentee: R. Scribner et al.
Serial or Patent No.: 09/ 134,323
Filed or Issued: August 14, 1998
For: Systems and Methods for Placing Materials Into Bone

**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY
STATUS (37 CFR 1.9(F) and 1.27(c) - SMALL BUSINESS CONCERN**

I hereby declare that I am

- ☐ the owner of the small business concern identified below:
☒ an official of the small business concern empowered to act on behalf of the concern identified below:

NAME OF CONCERN
ADDRESS OF CONCERN

KYPHON INC.
3110 Coronado Drive
Santa Clara, California 95054

I hereby declare that the above identified small business concern qualifies as a small business concern as defined in 13 CFR 121.3-18, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under Section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third-party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed, to and remain with the small business concern identified above with regard to the invention, entitled

Systems and Methods for Placing Materials into Bone
by inventor(s) Robert Scribner, Michael Reo, Mark Reiley and Ryan Boucher

described in

☐ the specification filed herewith.
☒ application serial no. 09/ 134,323, filed August 14, 1998
☐ patent no. _____, issued _____

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed below and no rights to the invention are held by any person, other than the inventor, who could not qualify as a small business concern under 37 CFR 1.9(d) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27).

(Small Entity-Small Business [7-4]-page 1 of 2)

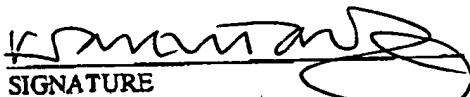
NAME _____
ADDRESS _____
☐ INDIVIDUAL ☐ SMALL BUSINESS CONCERN ☐ NONPROFIT ORGANIZATION

NAME _____
ADDRESS _____
☐ INDIVIDUAL ☐ SMALL BUSINESS CONCERN ☐ NON-PROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small business entity is no longer appropriate. (37 CFR 1.28(b)).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING KAREN TALMADGE
TITLE OF PERSON OTHER THAN OWNER PRESIDENT Executive Vice President
ADDRESS OF PERSON SIGNING 3110 CORONADO DRIVE
SANTA CLARA, CALIFORNIA 95054


SIGNATURE

21 Jan 99
Date